

GENERAL PROVISIONS FOR FIRM FIXED PRICE CONSTRUCTION SUBCONTRACTS

**This set of General Provisions consists of Sections A through F.
The clauses in Section F apply only if specifically states in the subcontract.**

(FFP Const 04-05, Rev. 1)



Waste Isolation Pilot Plant
Carlsbad, New Mexico

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Incorporated by reference to appropriate FAR clause (see <http://www.arnet.gov/far/>) and DEAR clause (<http://www.pr.doe.gov/dear.html>)

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GENERAL PROVISIONS FOR FIRM FIXED PRICE CONSTRUCTION SUBCONTRACTS

This document incorporates one or more clauses by reference, with the same force and effect as if they were printed in full text. The terms "Contacting Officer", "Contractor", and "Subcontractor" shall be changed to properly identify the parties. Washington TRU Solutions (WTS) is not a Federal Agency; the use of the referenced text is for the administrative convenience of WTS. Upon request, the Buyer will make their full text available.

Note: Subcontract clauses incorporated by reference.

DEFINITIONS

Whenever used in this document with initial capitalization, the following definitions shall be applicable unless the context indicates otherwise:

- A. "Buyer" shall mean the WTS representative(s) authorized to enter into the Order with the Subcontractor and to effect modifications and take other action hereunder. Where the context requires, the term "Buyer" may also refer generally to WTS.
- B. "Contracting Officer" shall mean a person with the authority to enter into, administer, and/or terminate contracts. In FAR and DEAR clauses referenced herein, the term may be interchangeable with WTS and/or Buyer.
- C. "DEAR" shall mean the Department of Energy Acquisition Regulation.
- D. "DOE" shall mean the United States Department of Energy or any duly authorized representative thereof including any successor or predecessor. The term includes the term "Government."
- E. "FAR" shall mean the Federal Acquisition Regulation.
- F. "Order" shall mean the agreement for the furnishing of supplies and services to the WTS. The term includes the term "Subcontract."
- G. "Subcontractor" shall mean the person or organization entering into the Order with the WTS. The term includes the term "Seller."
- H. "WTS" shall mean Washington TRU Solutions, LLC, Waste Isolation Pilot Plant.

GENERAL

- A. The Order, which shall be deemed to include the purchase order or Subcontract and related plans, drawings, specifications, and other documents, contains the entire agreement and understanding between the parties as to the subject matter of the Order, and merges and supersedes all prior agreements, understandings, commitments, representations, writings, and discussions between them. Neither of the parties will be bound by any prior obligations, conditions, warranties, or representations with respect to the subject matter of the Order. The parties agree that recourse may not be had to alleged prior dealings, usage of trade, course of dealing, or course of performance to explain or supplement the express terms of the Order.
- B. The failure of either party to enforce at any time any of the provisions of the Order or to require at any time performance by the other party of any of such provisions shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of the Order or any parts thereof, or the right of either party thereafter to enforce each and every provision.

- C. The headings used in the Order are not to be construed as modifying, limiting, or expanding in any way the scope or extent of the provisions in the Order.
- D. All references herein to DEAR or FAR are those in effect on the date of the Order.
- E. Any inconsistency in this solicitation or Order shall be resolved by giving precedence in the following order: (1) the schedule, including the facing sheet (excluding the specifications), (2) representations and other instructions, (3) Order clauses, (4) other documents, exhibits, and attachments, and (5) the specifications.
- F. The Subcontractor shall perform all work pursuant to the Order as an independent contractor. If any part of the work is subcontracted, the Subcontractor is responsible for having that subcontracted work comply with the terms of the Order. No act or order of the WTS shall be deemed to be an exercise of supervision or control of performance hereunder. No provision of the Order and no action taken by the WTS under the Order shall be construed to make or constitute the WTS the employer or joint employer of any of the employees of the Subcontractor or any lower-tier subcontractor.
- G. The Order does not bind or purport to bind the Government except as specifically provided in the Order, nor give privities of contract to the DOE through the WTS relationship with the DOE.

SECTION A - APPLIES REGARDLESS OF THE ORDER PRICE

A.1 ACCIDENT PREVENTION

- A. The Subcontractor shall provide and maintain work environments and procedures which will (1) safeguard the public and WTS personnel, property, materials, supplies, and equipment exposed to Subcontractor operations and activities, (2) avoid interruptions of WTS operations and delays in project completion dates, and (3) control costs in the performance of the Subcontract.
- B. For the purposes of paragraph A above on subcontracts for construction or dismantling, demolition, or removal of improvements, the Subcontractor shall:
 - 1. Provide appropriate safety barricades, signs, and signal lights;
 - 2. Comply with the standards issued by the Secretary of Labor at 29 CFR 1926 and 29 CFR Part 1910; and
 - 3. Ensure that any additional measures the WTS determines to be reasonably necessary for the purposes are taken.
- C. Whenever the WTS becomes aware of any noncompliance with these requirements or any condition that poses a serious or imminent danger to the health or safety of the public or Government personnel, the WTS shall notify the Subcontractor verbally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Subcontractor or the Subcontractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that the corrective action is required. After receiving the notice, the Subcontractor shall immediately take corrective action. If the Subcontractor fails or refuses to promptly take corrective action, the WTS may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Subcontractor shall not be entitled to any equitable adjustment of the Subcontract price or extension of the performance schedule on any stop work order issued under this article.

- D. The Subcontractor shall take all reasonable precautions in the performance of the work under the Order to protect the safety and health of employees and of members of the public, and shall comply with all applicable safety and health regulations and requirements (including reporting requirements) of the WTS. The WTS shall notify the Subcontractor, in writing, of any noncompliance with the provisions of the article and the corrective action to be taken after receipt of such notice, and the Subcontractor shall immediately take corrective action. Upon the WTS's request, the Subcontractor shall submit a management program and implementation plan to the WTS for review and approval within thirty (30) days after the date of award of the order. In the event that the Subcontractor fails to comply with said regulations or requirements of the WTS, the Buyer may, without prejudice to any other legal or contractual rights of the WTS, issue an order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of the WTS. The Subcontractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, such work stoppage.
- E. The Subcontractor shall insert this article, including this paragraph E, with appropriate changes in the designation of the parties, in all lower-tier subcontracts.
- F. Before commencing the work, the Subcontractor shall:
 - 1. Submit a written proposed plan for implementing this article. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in the Subcontract work performance and a plan for controlling these hazards; and
 - 2. Meet with a representative(s) of the WTS to discuss and develop a mutual understanding relative to the administration of the overall work safety program under the Subcontract to accommodate the additional work, heeding any direction that may be provided by the WTS. The Seller shall not commit or permit any act that will interfere with the performance of work by any other subcontractor or by Government employees.

- A.2 ACQUISITION OF REAL PROPERTY DEAR 952.217-70
- A.3 ADDITIONAL DATA REQUIREMENTS FAR 52.227-16
- A.4 ADDITIONAL BOND SECURITY FAR 52.228-2
- A.5 APPRENTICES AND TRAINEES FAR 52.229-9
- A.6 APPROVALS

Approval by the WTS of designs, work drawings, specifications, reports, or any other data submitted by the Seller hereunder shall not affect or relieve the Subcontractor from any responsibility to furnish said item, in full conformance with the requirements of the Order.

A.7 ASSIGNMENT

- A. The WTS may assign the Order, in whole or in part, to the DOE or to such party as the DOE may designate to perform the WTS's obligations hereunder. Upon receipt by the Subcontractor of written notice that the DOE or a party so designated by the DOE has accepted an assignment of the Order, the WTS shall be relieved of all responsibility hereunder and the Subcontractor shall thereafter look solely to such assignee for performance of the WTS's obligations. The Subcontractor shall not assign or transfer the Order or any interest herein, or claims hereunder, without the prior written consent of the WTS or the WTS's assignee.

- B. The Subcontractor shall not furnish or disclose to any assignee under the subcontract any classified document (including the subcontract) or information related to work under the subcontract until the WTS authorizes such action in writing.

A.8	AUDIT SEALED BIDDING	FAR 52.214-26
A.9	AUTHORIZATION AND CONSENT, ALTERNATE I	FAR 52.227-1
A.10	AVAILABILITY OF AND USE OF UTILITY SERVICES	FAR 52.236-14
A.11	BANKRUPTCY	FAR 52.242-13
A.12	BUY AMERICAN ACT – CONSTRUCTION MATERIALS	

- A. “Components” means those articles, materials, and supplies incorporated directly into construction materials.

“Construction Material” means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction Material also includes an item brought to the site pre-assembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into public building or work and which are produced as a complete system, shall be evaluated as a single and distinct Construction Material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

“Domestic Construction Material” means (1) an un-manufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to subparagraph 25.2.2(a)(2) of the Federal Acquisition Regulation (FAR) shall be treated as domestic.

- B. Domestic Preference.

1. The Buy American Act (41 U.S.C. 10a-10d) requires that only Domestic Construction Material be used in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.
2. This requirement does not apply to the excepted Construction Material or components listed by the Government as follows: none.
3. Other foreign Construction Material may be added to the list in paragraph (B)(2) of this clause if the Government determines that:
 - (i) The cost would be unreasonable (the cost of a particular Domestic Construction Material shall be determined to be unreasonable when the cost of such material exceeds the cost of foreign material by more than six percent, unless the agency head determines a higher percentage to be appropriate);
 - (ii) The application of the restriction of the Buy American Act to a particular Construction Material would be impracticable or in-consistent with the public interest; or
 - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

4. The Subcontractor agrees that only Domestic Construction Material will be used by the Contractor, Subcontractors, material men, and suppliers in the performance of this contract, except for foreign Construction Materials, if any, listed by paragraph (B)(2) of this clause.

C. Request for determination

1. Subcontractors requesting to use foreign Construction Material under paragraph (B)(3) of this clause shall provide adequate information for Government evaluation of the request for a determination regarding the inapplicability of the Buy American Act. Each submission shall include a description of the foreign and Domestic Construction Materials, including unit of measure, quantity, price, time of delivery or availability, location of the construction project, name and address of the proposed contractor, and a detailed justification of the reason for use of foreign materials cited in accordance with paragraph (B)(3) of this clause. A submission based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (D) of this clause. The price of Construction Material shall include all deliver costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
2. If the Government determines after contract award that an exception to the Buy American Act applies, the Subcontract shall be modified to allow use of the foreign Construction Material, and adequate consideration shall be negotiated. However, when the basis for the exception in the unreasonable price of a Domestic Construction Material, adequate consideration shall not be less than the differential established in paragraph (b)(3)(i) of this clause.
3. If the Government does not determine that an exception to the Buy American Act applies, the use of that particular foreign Construction Material will be a failure to comply with the Act.

- D. For evaluation of requests under paragraph (C) of this clause based on unreasonable cost, the following information and any applicable supporting data based on the survey of supplies shall be included in the request:

FOREIGN AND DOMESTIC CONSTRUCTION
MATERIALS PRICE COMPARISON

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)
Item 1 Foreign Construction Material			
Domestic Construction Material			
Item 2 Foreign Construction Material			
Domestic Construction Material			

List name, address, telephone number, and contract for suppliers surveyed. Attach a copy of response; if oral, attach summary. Include other applicable supporting information.

* Include all delivery costs to the construction site and any applicable duty (whether or not duty-free entry certificate is used).

A.13 CERTIFICATION OF ELIGIBILITY	FAR 52.222-15
A.14 CHANGES	FAR 52.243-4
A.15 CLASSIFIED INVENTIONS	DEAR 970.2701
A.16 CLEANING UP	FAR 52.236-12

A.17 COMPLIANCE WITH COPELAND ACT REQUIREMENTS FAR 52.222-10

A.18 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS FAR 52.222-13

A.19 CONFIDENTIALITY OF INFORMATION

A. To the extent that the work under the Order requires that the Subcontractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Subcontractor shall, after receipt thereof, treat such information as confidential and agree not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the WTS in writing. The foregoing obligations, however, shall not apply to:

1. Information which, at the time of receipt by the Subcontractor, is in the public domain.
2. Information which is published after receipt thereof by the Subcontractor or otherwise becomes part of the public domain through no fault of the Subcontractor.
3. Information which the Subcontractor can demonstrate was in his possession at the time of receipt thereof and was not acquired directly or indirectly from the WTS or other companies.
4. Information which the Subcontractor can demonstrate was received by it from a third party who did not require the Subcontractor to hold it in confidence.

B. The Subcontractor shall obtain the written agreement, in a form satisfactory to the WTS, of each employee permitted access, whereby the employee agrees that they will not discuss, divulge, or disclose any such information or data to any person or entity except those persons within the Seller's organization directly concerned with the performance of the Subcontract.

C. The Subcontractor agrees, if requested by the WTS, to sign an agreement identical in all material respects to the provisions of this clause with each company supplying information to the Subcontractor under the Order, and to supply a copy of such agreement to the WTS. From time to time upon request of the WTS, the Subcontractor shall supply the WTS with reports itemizing information received as confidential or proprietary, and setting forth the company or companies from which the Subcontractor received such information.

D. The Subcontractor agrees that upon request by the WTS it will execute a WTS approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by the WTS, such an agreement shall also be signed by Subcontractor personnel.

E. This clause shall flow down to all lower-tier subcontracts.

A.20 CONTRACT TERMINATION – DEBARMENT FAR 52.222-12

A.21 CONTRACTING BY NEGOTIATION FAR 52.236-28

A.22 CONVICT LABOR FAR 52.222-3

A.23 DAVIS-BACON ACT FAR 52.222-6

A.24 DAVIS-BACON ACT PRICE ADJUSTMENT FAR 52.222-30

A.25 DEFAULT – CONSTRUCTION, ALTERNATE I FAR 52.249-10
(For Dismantling, Demolition, or Removal of Government Structures)

A.26 DIFFERING SITE CONDITIONS FAR 52.236-2

A.27 DISPUTES AND GOVERNING LAW

All disputes between the parties pertaining to the Order which are not disposed of by agreement shall be decided by litigation. Litigation initiated by either party against the other to resolve a dispute arising under or pertaining to the Order shall be instituted in the United States Federal District Court for the district of New Mexico (or in another division of that district should the parties so agree) if that court has jurisdiction, and neither party will move for a change of venue or, pursuant to 28 U.S.C. 1404, for a transfer from said district or division. If the United States district court for the district of New Mexico does not have jurisdiction but another United States district court does, such litigation will be initiated in the latter. In the event no United States district court has jurisdiction, the litigation will be initiated (and insofar as the parties may control, conducted through the trial stage) in the district court of the judicial district of the state of New Mexico, in Eddy County. The Subcontractor shall proceed diligently with the performance of the Order pending final resolution of any dispute arising under or related to the Order.

The terms of the Order shall be construed and interpreted in accordance with the body of law applicable to the procurement of goods and services by the Government. Insofar as the said body of law is not disparities of a dispute, the laws of the state of New Mexico shall govern.

A.28 DISPUTES CONCERNING LABOR STANDARDS FAR 52.222-14

A.29 ENVIRONMENTAL COMPLIANCE (Applies only to work performed on Government facilities)

A. Definitions.

As used in the Subcontract, the following capitalized terms shall have the meaning therein:

1. "Hazardous Waste" shall mean any waste or constituent regulated under the Resource Conservation and Recovery Act (RCRA) as amended (42 U.S.C. 6901 et seq.), or as set forth in 40 CFR 260 et seq., or in any similar laws of any state or local governmental authority having jurisdiction over the place(s) where (a) the work under the Subcontract will be performed, or (b) any Hazardous Waste will be generated, shipped, stored, treated, or disposed of. Briefly, a waste is a Hazardous Waste if it exhibits a hazardous characteristic (ignitable, corrosive, reactive, or toxic), and/or it is listed in Subpart D of the RCRA regulations
2. For this document, the term "Hazardous Substance" shall be used generically to include any "Hazardous Substance" as defined in the Comprehensive Environmental Response, Compensation and Liability Act as amended (42 U.S.C. 9601 et seq.), any "Hazardous Material" as regulated under the Hazardous Materials Transportation Act as amended (49 U.S.C. 1801 et seq.), or Occupational Safety and Health Act (OSHA) 29 CFR 1910 Subpart H, "Oil" as defined in or under the Clean Water Act as amended (33 U.S.C. 1251 et seq.), any "Chemical or Toxic or Hazardous Substance or Material" as defined in the Toxic Substance Control Act (TSCA) (15 U.S.C. 2601 et seq.), and, without limitation, any other substance or material identified as a toxic or hazardous substance, chemical, or material, as such terms may be defined in or under any other applicable local, state, or federal law, statute, ordinance, code, rule, or regulation. The term "Hazardous Substance" shall also include any container, device, material, component, and/or item, of which a Hazardous Substance as defined above is a constituent, or in which a Hazardous Substance as defined above is contained.

3. "Environmental Procedure" shall mean a document or series of documents published by the WTS and incorporated into the Order by reference, which set forth and establish the policy for compliance with environmental laws and regulations by Subcontractors and suppliers to the WTS, including lower-tier subcontractors and suppliers at any tier.
4. A "Preexisting Hazardous Substance" shall mean a Hazardous Substance(s) and/or Hazardous Waste that are already present at a WIPP facility through no act or omission of the Subcontractor or its representatives.

B. Environmental Compliance.

In addition to and without limitation on the general duty of the Subcontractor, the Subcontractor shall comply with all applicable laws and regulations as indicated below:

1. The Subcontractor and all of its lower-tier subcontractors and suppliers of any tier, and its and their employees and/or agents (hereinafter called "representatives") shall comply with all health, safety, and environmental laws, statutes, ordinances, rules, regulations, permits, and orders regulating or dealing with a Hazardous Substance(s) or Hazardous Waste that are or become applicable during the term of the Order.
2. During the term of the Order, the Subcontractor shall obtain and maintain all permits, licenses, certificates, approvals, and other authorities required to conduct the work and perform the services specified under the Order.
3. Without limiting the applicability and generally of the foregoing subparagraph B.1 and B.2, the Subcontractor shall comply with any appropriate provisions of applicable environmental procedures with respect to work or services that will be performed, or equipment or materials that will be supplied under the Order.

C. Management of Hazardous Substances and Hazardous Waste.

1. The Subcontractor shall notify the WTS immediately if and when it encounters a pre-existing Hazardous Substance(s) or pre-existing Hazardous Waste in the performance of the work. Such notice shall identify the location and time of the encounter and shall specify, to the extent known or suspected by the Seller or its representatives, the nature and extent of the contamination. The Subcontractor shall take no action with respect to such pre-existing Hazardous Substance(s) without the written consent of the WTS. The foregoing shall not apply (a) to a pre-existing Hazardous Substance(s) identified in the Order or as otherwise formally identified by the WTS to be encountered in the performance of the work, or (b) if the Order calls for the remediation or removal of the pre-existing Hazardous Substance(s) or areas contaminated therewith, in either of which events the Subcontractor shall be finally responsible for the proper and safe handling and management of the pre-existing Hazardous Substance(s). The Subcontractor and its representatives shall cooperate with the WTS or its designee regarding such pre-existing Hazardous Substance(s) and make available its records and personnel with respect thereto.
2. Under no event shall the Subcontractor or any of its representatives bring or allow the bringing of Hazardous Waste on or into the work site unless specifically allowed by the Order or otherwise formally approved by the WTS. In the event that the Subcontractor or any of its representatives introduce or allow a Hazardous Substance(s) or Hazardous Waste to be introduced on or into the site, generate any Hazardous Waste(s), or handle a pre-existing Hazardous Substance(s) or areas contaminated therewith as part of its obligations under the Order, at the work site or in connection with the work or services, the Subcontractor shall be solely responsible for all costs and liabilities associated with such Hazardous Substance(s) or Hazardous Waste and shall handle, manage, store, treat, or

dispose of such Hazardous Substance(s) or Hazardous Waste in strict compliance with all applicable laws, statutes, ordinances, rules, regulations, permits, orders, and environmental procedures. Without limiting the generality of the foregoing, the Subcontractor shall (a) provide a Material Safety Data Sheet (MSDS) for each Hazardous Substance, (b) perform and maintain all required record keeping, reporting, manifesting, labeling, and other documentation, (c) provide all required safety and health devices or equipment and training, and (d) ensure that all such Hazardous Substance(s) or Hazardous Waste is managed, transported, treated, stored, or disposed of at lawfully permitted or licensed facilities in accordance with all applicable laws, regulations, and ordinances.

3. The provisions of this article relating to Hazardous Substances shall not apply to such material or substances wholly and routinely contained within equipment or materials utilized by the Subcontractor in the performance of the work, provided that there is no leak, spill, discharge, or release of the Hazardous Substance (e.g., sulfuric acid in batteries).

D. Liability.

The Subcontractor shall assume and indemnify the WTS against any and all costs, damages, expenses, and liability due to any personal injury, death, property damage, environmental harm, environmental impairment, fines, penalties, or otherwise, arising or resulting from:

1. The failure of the Subcontractor or any of its representatives to comply with the provisions of this article.
2. The receipt, handling, transportation, treatment, storage, or disposal of a Hazardous Substance(s) or Hazardous Waste where it is the responsibility of the Subcontractor or its representatives as included under the Order or applicable law.
3. The negligent or intentionally tortuous conduct of the Subcontractor or its representatives regarding or in connection with a Hazardous Substance(s) or Hazardous Waste.

A.30 EQUAL OPPORTUNITY FAR 52.222-26

A.31 FILING OF PATENT APPLICATIONS – CLASSIFIED SUBJECT MATTER FAR 52.227-10

A.32 GRATUITIES FAR 52.203-3

A.33 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

- A. "Hazardous Material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).
- B. The Subcontractor must list any Hazardous Material, as defined in paragraph (A) of this clause, to be delivered under this contract. The Hazardous Material shall be properly identified and include any applicable identification number, such a National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet (MSDS) submitted under this contract.

MATERIAL
(If none, insert "None")

Identification No.

- C. This list must be updated during performance of the contract whenever the Subcontractor determines that any other material to be delivered under this Subcontract is hazardous.
- D. The Subcontractor agrees to submit, for each item as required prior to award, a MSDS, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all Hazardous Material identified in paragraph (B) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the Subcontractor is the actual manufacturer of these items. Failure to submit the MSDS prior to award may result in the Subcontractor being considered irresponsible and ineligible for award.
- E. If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (D) of this clause, the Subcontractor shall promptly notify WTS and resubmit the data.
- F. Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Subcontractor of any responsibility or liability for the safety of Government, WTS, or Subcontractor personnel or property.
- G. Nothing contained in this clause shall relieve the Subcontractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with Hazardous Material.
- H. The Government's rights in data furnished under this contract with respect to Hazardous Material are as follows:
 - 1. To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to—
 - (i) Appraise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
 - (ii) Obtain medical treatment for those affected by the material; and
 - (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.
 - 2. To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (H)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.
 - 3. The Government is not precluded from using similar or identical data acquired from other sources.

This clause shall flow down to all lower-tier subcontracts.

A.34 INSPECTION OF CONSTRUCTION FAR 52.246-12

A.35 INTEREST FAR 52.232-17

A.36 LAYOUT OF WORK FAR 52.236-17

A.37 LAWS, REGULATIONS, ORDERS AND DOE DIRECTIVES

- A. The Subcontractor shall comply with those DOE orders and other directives applicable to management and operating (M&O) contractors, with all applicable departmental policies, plans, programs, and management directives, and with all changes to assigned work which are transmitted to the Subcontractor by the WTS as directed by the Contracting Officer or designee.

In performing work under this Subcontract, the Subcontractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. This requirement applies to all lower-tier subcontractors.

- B. DOE, in consultation with the WTS and the Subcontractor, shall develop a list of all DOE directives (Orders, Notices and Secretary of Energy Notices), and local directives (Orders and Notices) in effect on the effective date of this modification. The Subcontractor shall comply with the directives identified in such list. The Subcontractor shall make no claim, including a claim for equitable adjustment under the changes clauses of the subcontract, for additional costs, fees, or extensions of time of performance relating to compliance with the directives in such list.
- C. The Contracting Officer, through the WTS, may direct the Subcontractor to comply with additional DOE directives, local directives and revisions thereto, as follows:
 - 1. Pursuant to and in accordance with the changes clause of the Subcontract, with respect to changes in directives within the general scope of the Subcontract;
 - 2. Pursuant to the clause at Environment, Safety, and Health (government owned or leased), and in accordance with the changes clause of the subcontract with respect to changes in the series between 5400 and 5500 (Environment Quality and Impact); and
 - 3. Pursuant to the clause at DEAR 952.204-2, Security, and in accordance with the changes clause of the subcontract, with respect to changes in directives in the following series: (i) between 5630 and 5640 (Safeguards and Security), (ii) between 5640 and 5650 (International Security Affairs), and (iii) between 5650 and 5660 (Classification).
- D. Copies of Department of Energy Directives may be obtained without charge from:

U.S. Department of Energy
Distribution Section
Federal Building
Washington, DC 20585
- E. The Contracting Officer and his/her representative(s) expressly authorized in writing to do so are the only Government officials authorized to provide explanations as to the applicability of directives. The Contracting Officer is the only Government official authorized to resolve possible conflicting requirements involving them.
- F. Upon receipt of a new or revised Order, the Subcontractor shall review it for consistency with the other terms of the subcontract and for impacts on funding, labor, and other provisions of the subcontract. If the Subcontractor considers the Order to be consistent with the other terms of the subcontract, it can be implemented within existing funds, labor, and other provisions of the subcontract, and the implementation will not have a negative impact on the cost, schedule, or other obligations of the Subcontractor, the Subcontractor shall establish and implement a schedule, and so advise the Contracting Officer, through the WTS, within thirty (30) calendar days of receipt.

In the event the Subcontractor considers the Order to be inconsistent with the other terms of the Subcontract, or the requirements of the Order cannot be implemented within existing funding, labor, and other provisions of the Subcontract, the Subcontractor shall so advise the Contracting Officer, through the WTS, within thirty (30) calendar days of receipt. Such notice shall include the basis for the claimed inconsistency and the projected cost of implementation in excess of current funding, labor, and other provisions of the Subcontract. After evaluation of the Subcontractor's position, the Contracting Officer shall issue direction to the WTS and the

Subcontractor, pursuant to the clause entitled "Changes" concerning appropriate implementation of the Order.

The Subcontractor shall incorporate the substance of this clause with respect to applicable orders, excluding any reference to the Changes clause, in lower-tier subcontracts for performance of work at the site and as directed by the Contracting Officer.

A.38 MATERIAL REQUIREMENTS FAR 52.211-5

A.39 MATERIALS AND WORKMANSHIP FAR 52.236-5

A.40 NEW MEXICO GROSS RECEIPTS TAX AND COMPENSATING TAX

By reason of WTS's Nontaxable Transaction Certificate, the Subcontractor shall not include in the price any state and local taxes except those which were paid by the Subcontractor to third parties in acquiring the items which are the subject matter of this Agreement. The price does include all applicable Federal Taxes.

- A. The Subcontractor shall pay the New Mexico compensating user tax for any tangible personal property which is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.
- B. Out-of-state purchase of tangible personal property by the Subcontractor which, would be otherwise subject to compensation tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the Subcontractor only if such property is not used for Federal purposes.
- C. The Company may receive information regarding the Subcontractor from the Revenue Division of the New Mexico Taxation and Revenue Department and at the discretion of the Company, may participate in any matters or proceedings pertaining to this clause or the above-mentioned Agreement. This shall not preclude the Subcontractor from having its own representative nor does it obligate the Company to represent its Subcontractor. (*Insert appropriate agency name in blanks.)

The Subcontractor agrees to insert the substance of the clause, including this paragraph (h), in each subcontract which meets the criteria in CFR 29.401-6(b)(1) through (3) of the Federal Acquisition Regulation, 48 CFR Part 29.

A.41 NOTICE TO GOVERNMENT OF LABOR DISPUTES FAR 52.222-1

A.42 OBLIGATION OF FUNDS

Unless otherwise specifically provided for in the Order, WTS is not obligated to pay any amount in excess of the stated Order or subcontract price or, where partial funds are released incrementally, the obligated amount as released.

A.43 ORGANIZATIONAL CONFLICTS OF INTEREST DEAR 952.209-27

A.44 OTHER WTS AND GOVERNMENT SUBCONTRACTORS

The WTS may undertake or award subcontracts for other work or services. The Subcontractor agrees to fully cooperate with such other subcontractors and government employees and carefully fit its own work to such other work as may be directed by WTS. The Subcontractor shall not commit or permit any act which will interfere with the performance of work by any other subcontractor or by Government employees,

A.45 PAYMENTS	FAR 52.232-5
A.46 PAYROLLS AND BASIC RECORDS	FAR 52.222-8
A.47 PASSAGE OF TITLE AND LIENS	

The Subcontractor agrees to furnish the work free and clear of all liens, claims, and encumbrances. In the event that a lien of any nature shall at any time be filed against the work, or the Subcontractor's or a lower-tier subcontractor's facility by any person, firm, or corporation which has supplied equipment, materials, services, or data, the Subcontractor agrees promptly, on demand of the WTS and at the Subcontractor's expense, to take any and all action necessary to cause any such lien to be released or discharged therefrom. The Subcontractor agrees to save the WTS harmless from all liens, claims, or demands in connection with the work.

A.48 PATENT INDEMNITY	FAR 52.227-3
This article does not apply, except for supplies offered the general public, if FAR 52.227-1, Alternate I has been made applicable under Section F of these General Provisions.	

A.49 PATENT INDEMNITY – CONSTRUCTION SUBCONTRACTS	FAR 52.227-4
A.50 PRINTING	DEAR 970.5208-1
A.51 PROHIBITION OF ASSIGNMENT OF CLAIMS	FAR 52.232-24
A.52 PROHIBITION OF SEGREGATED FACILITIES	FAR 52.222-21
A.53 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES AND IMPROVEMENTS	FAR 52.236-9
A.54 PUBLIC RELEASE OF INFORMATION	

Information, data, photographs, sketches, advertising, announcements, denial, or confirmation of same, or items of a similar nature, relating to this Order, which Subcontractor desires to release or publish, shall be submitted to WTS for approval eight weeks prior to the desired release date. As part of the approval request, Subcontractor shall identify the specific media to be used as well as other pertinent details of the proposed release. All releases by Subcontractors must have the prior approval of WTS. The Project Sponsor is the DOE. Subcontractor shall include all provisions of this article including this sentence in all subcontracts or purchase orders under this Order. WTS's approval shall not be unreasonably withheld.

A.55 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	FAR 52.225-13
A.56 SCHEUDLES FOR CONSTRUCTION CONTRACTS	FAR 52.236-15
A.57 SECURITY	DEAR 952.204-2
A.58 SENSITIVE FOREIGN NATIONS CONTROLS (Attachment 1 to be provided upon request)	DEAR 952.204-71
A.59 SITE VISIT (CONSTRUCTION)	FAR 52.236-27
A.60 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION	FAR 52.236-21
A.61 SUBCONTRACTS (LABOR STANDARDS)	FAR 52.222-11

A.62 SUBCONTRACTS FOR COMMERCIAL ITEMS AND
COMMERCIAL COMPONENTS

FAR 52.244-6

A.63 STOP WORK ORDER

FAR 52.242-15

A.64 SUSPECT/COUNTERFEIT ITEMS

- a. A suspect item is one in which there is an indication by visual inspection, testing, or other information that it may not conform to established Government or industry-accepted specifications or national consensus standards. A counterfeit item is a suspect item that is a copy or substitute without legal right or authority or one whose material, performance, or characteristics are knowingly misrepresented by the vendor, supplier, distributor, or manufacturer. Such items may be labeled to represent a different class of parts, or used and/or refurbished parts, complete with false labeling, that are represented as new parts.
- b. Suspect/counterfeit items **do not include** non-conforming items resulting from inadequate design or production quality control. Such items shall be handled in accordance with WTS' nonconforming item procedures.
- c. Materials and items furnished by the Seller to WTS under this Agreement shall not include suspect/counterfeit parts nor shall such parts be used in performing any work under this Agreement whether on or off the WIPP site.
- d. If Suspect/counterfeit parts furnished under this Agreement and are identified as such at the WIPP site, such items shall be impounded by WTS. The Seller shall promptly replace with items acceptable to WTS and the Seller shall be liable for all costs relating to impoundment, removal, and replacement. WTS may turn such items over to the U. S. Office of the Inspector General for investigation and reserves the right to withhold payment for the suspect items pending the results of the investigation.
- e. The rights of WTS in this clause are in addition to any other rights provided by law or under this agreement.

A.65 SUPERINTENDENCE BY THE SUBCONTRACTOR

FAR 52.236-6

A.66 TRAVEL RESTRICTIONS

Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable except when such accommodations are not reasonably available to meet mission requirements.

Costs incurred for lodging, meals, and incidental expenses are considered reasonable and allowable to the extent that they do not exceed the maximum per diem rates in effect at the time of travel as set forth in:

1. Federal Travel Regulations (FTR) for travel within the 48 states;
2. Joint Travel Regulations (JTR) for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States; or
3. Standardized Regulations (SR) for travel allowances in foreign areas.

A.67 TERMINATION FOR CONVENIENCE, ALTERNATE 1

FAR 52.249-2

A.68 USE AND POSSESSION PRIOR TO COMPLETION

FAR 52.236-11

A.69 VARIATION IN QUANTITY

A variation in the quantity of any item called for by the Order will not be accepted unless the variation has been caused by conditions of loading, shipping or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified in the Order. At the option of the WTS, excess quantities will either be returned at the Subcontractor's expenses or retained and paid for by the WTS at the Order unit price.

A.70 WARRANTY FAR 52.246-21

A.71 WHISTLE-BLOWER PROTECTION FOR CONTRACTOR
EMPLOYEES DEAR 952.203-70

A.72 WITHHOLDING OF FUNDS FAR 52.222-7

A.73 WORK ON GOVERNMENT PREMISES – SUBCONTRACTOR'S RESPONSIBILITY

- A. As to the work to be done or performed by the Subcontractor on premises owned or controlled by the WTS, the Government, or the premises of other WTS subcontractors, the Subcontractor assumes the entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any injury (including death) or damage to property sustained in connection with, or to have arisen out of the acts or omissions of, the Subcontractor or its lower-tier subcontractors, agents, or employees. The Subcontractor shall indemnify and hold harmless the WTS from and against any and all claims, demands, actions, causes of action, suits, damages, expenses (including attorney fees) and liabilities whatsoever resulting from or arising in any manner on account of or by reason of any injury to or death of any person or any damage to or loss of property attributable to the acts or omissions of the Subcontractor or its lower-tier subcontractors, agents, or employees. Nothing in the foregoing shall be construed to require the Subcontractor to indemnify and save harmless the WTS from any liability arising out of or resulting from a nuclear incident.
- B. The Subcontractor shall procure or cause to be procured at its own expense, and shall likewise maintain or cause to be maintained, while any work is being performed and for such period thereafter as may be necessary under the circumstances, insurance sufficient to protect the Subcontractor, the WTS, the Subcontractor's lower-tier subcontractors, and the Government against all liability with respect to bodily injury or death, or property loss or damage, which may be imposed by law upon the Subcontractor or which is assumed by the Subcontractor under the Order. Such insurance shall be in such amounts, with such companies, and in such forms as are satisfactory to the WTS, and shall provide for at least thirty (30) days prior written notice to the WTS of cancellation thereof. All such policies of insurance shall contain an article reading substantially as follows: "The insurer waives any right of subrogation against Washington TRU Solutions, its lower-tier subcontractors and suppliers, and the United States of America which might arise by reason of any payment under his policy." Certificates of such insurance shall be furnished to the WTS prior to the commencement of any work by or for the Subcontractor. The Subcontractor shall not be relieved of liability assumed pursuant to this article by reason of the procurement, maintenance, limits, or coverage of any insurance policies, whether or not approved by the WTS.
- C. The Subcontractor agrees to comply (and require its lower-tier subcontractors to comply) with all applicable laws, rules, and regulations with respect to state industrial insurance or worker's/workmen's compensation, occupational disease, occupational safety and health, or withholding and payment of social security and federal income taxes, and further agrees to indemnify the WTS and the Government against, and to save and hold harmless the WTS and *the Government from, any and all liability and expense with respect to claims against the WTS

or the Government which may result from the failure or alleged failure of the Subcontractor or of any of its lower-tier subcontractors to comply therewith.

A.74 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES DEAR 970.5223-4

SECTION B - APPLIES IF THE PRICE OF THE ORDER EXCEEDS \$10,000

B.1 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES FAR 52.222-36

B.2 GOVERNMENT PROPERTY (FIXED PRICE CONTRACTS) FAR 52.245-2

SECTION C - APPLIES IF THE PRICE OF THE ORDER EXCEEDS \$25,000

C.1 EMPLOYMENT REPORTS ON DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS FAR 52.222-37

C.2 EQUAL OPPORTUNITY FOR DISABLED VETERANS, VETERANS OF THE VIETNAM ERA AND OTHER ELIGIBLE VETERANS FAR 52.222-35

C.3 DEBARRED/SUSPENDED CONTRACTORS (Applicable only at the \$25,000 threshold)

The Subcontractor is to disclose to WTS, in writing, whether at the time of award if the Subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government. The Subcontractor, if debarred, suspended, or proposed for debarment is not to proceed with any work or incur any costs for which WTS would otherwise be held accountable, until such time as authorized by WTS.

C.4 REPORTING OF ROYALTIES

If any royalty payments are directly involved in the Order or are reflected in the Order price, the Subcontractor agrees to report in writing to the WTS during the performance of the Order and prior to its completion or final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of the Order together with the names and addresses of the licensor to whom such payments are made and either the patent numbers involved or such other information as will permit identification of the patents or other basis on which the royalties are to be paid. The approval of the DOE or the WTS of any individual payments or royalties shall not preclude the Government or the WTS at any time from contesting the enforceability, validity or scope of, or title to any patent under which a royalty or payment is made. The provisions of this article, appropriately modified as to parties, shall be included in all Orders that exceed \$25,000 unless otherwise approved by the Contracting Officer.

SECTION D - APPLIES IF THE PRICE OF THE ORDER EXCEEDS \$100,000

D.1 ANTI-KICKBACK PROCEDURES FAR 52.203-7

D.2 CONTRACT WORK HOURS & SAFETY STANDARDS ACT - OVERTIME COMPENSATION FAR 52.222-4
(This clause shall flow down to all lower-tier subcontracts.)

D.3 CONTINUITY OF SERVICES FAR 52.237-3

D.4 COVENANT AGAINST CONTINGENT FEES FAR 52.203-5

D.5 INTEGRITY OF UNIT PRICES FAR 52.215-14

D.6	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT	DEAR 970.5227-5
D.7	PREFERENCES FOR PRIVATELY-OWNED U.S.-FLAG COMMERCIAL VESSELS	FAR 52.247-64
D.8	PROPERTY	DEAR 970.5245-1
D.9	REFRIGERATION EQUIPMENT AND AIR CONDITIONING	FAR 52.223-12
D.10	RESTRICTION ON SUBCONTRACTOR SALES TO GOVERNMENT	FAR 52.203-6
D.11	UTILIZATION OF SMALL BUSINESS CONCERNS	FAR 52.219-8

SECTION E - APPLIES IF THE PRICE OF THE ORDER EXCEEDS \$500,000

E.1	ADMINISTRATION OF COST ACCOUNTING STANDARDS (This clause shall flow down to all lower-tier subcontracts.)	FAR 52.230-6
E.2	COST ACCOUNTING STANDARDS (This clause shall flow down to all lower-tier subcontracts.)	FAR 52.230-2
E.3	DISPLACE EMPLOYEE HIRING PREFERENCE	DEAR 952.226-74
E.4	LIQUIDATED DAMAGES – SUBCONTRACTING PLAN	FAR 52.219-16
E.5	SMALL BUSINESS SUBCONTRACTING PLAN ALTERNATE IIA	FAR 52.219-9
E.6	WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL 1993	DEAR 970.5226-2

SECTION F –APPLIES ONLY IF SPECIFICALLY REFERENCED OR SET FORTH IN THE PURCHASE ORDER

F.1	ACCESS TO AND OWNERSHIP OF RECORDS	DEAR 970.5204-3
F.2	ACCIDENT PREVENTION	FAR 52.236-13
F.3	ACCOUNTS, RECORDS, AND INSPECTION	DEAR 970.5232-3
F.4	AFFIRMATIVE ACTION PROGRAMS	FAR 22.804-1
F.5	AFFIRMATIVE PROCUREMENT	

In performance of this subcontract, the Subcontractor shall provide biobased products and other applicable items composed of the highest percentage of recovered/recycled materials that are consistent with published minimum content standards and requirements as stated in the following issuances:

1. Executive order 13101 of September 14, 1998, entitled “Greening the Government Through Waste Prevention, Recycling and Federal Acquisition”.
2. Section 6002 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended (42 U.S.C. 6962, Pub. L. 94-580, 90 Stat. 2822).

3. Title 40 of the Code of Federal Regulation, Subchapter I, Part 247 (Comprehensive Guidelines for the Procurement of Products Containing Recovered Materials) and such other Subchapter I Parts or Comprehensive Procurement Guidelines as the Environmental Protection Agency may issue from time to time as guidelines for the procurement of products that contain recovered/recycled materials.
4. "U.S. Department of Energy Affirmative Procurement Program for Products Containing Recovered Materials" and related guidance document(s), as they are identified in writing by the Department of Energy.

The Subcontractor shall also prepare and submit a report identifying the types of environmentally preferable items provided, the quantities, provided and the dollar value expended per item classification, in accordance with direction from the Buyer.

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| F.6 | AUDITS AND RECORDS – NEGOTIATION | FAR 52.215-2 |
| F.7 | AUTHORIZATION AND CONSENT ALTERNATE 1 | FAR 52.227-1 |
| F.8 | CLASSIFICATION | DEAR 952.204-70 |
| F.9 | COLLECTIVE BARGAINING AGREEMENTS -
MANAGEMENT AND OPERATING CONTRACTS | DEAR 970.5222-1 |
| F.10 | CONTRACTORS ORGANIZATION | DEAR 970.5203-3 |
| F.11 | CONTROL OF UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION | |

The Seller shall handle and control information designed as unclassified controlled nuclear information in accordance with 10 CFR 1017.

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| F.12 | COST OR PRICING DATA | |
| 1. | PRICE REDUCTION FOR DEFECTIVE -
Modifications (Sealed Bidding) | FAR 52.214-27 |
| 2. | SUBCONTRACTS COST OR PRICING DATA | FAR 52.215-12 |
| 3. | REQUIREMENTS FOR COST OR PRICING OR
INFORMATION OTHER THAN COST OR PRICING DATA | FAR 52.215-20 |
| 4. | REQUIREMENTS FOR COST OR PRICING OR
INFORMATION OTHER THAN COST OR PRICING DATA
MODIFICATION | FAR 52.215-21 |

F.13 COST REDUCTION PROPOSALS

A. General

The Subcontractor is encouraged to develop, prepare, and submit Cost Reduction Proposals (CRP's) to the WTS through the Buyer for review by the DOE WIPP Project Office Contracting Officer. If accepted, the Subcontractor shall share in any net savings realized from accepted CRPs in amounts agreed to by the parties.

- B. Procedure for submission of CRPs. Each CRP submitted by the Subcontractor shall include, at a minimum, the following information:

1. A description of the existing requirements, the proposed CRP requirements, comparative advantages and disadvantages of each, and the effect of the proposed CRP on these requirements.
2. A description of the changes that must be made if the proposed CRP is accepted, including changes or waivers to design requirements, regulatory requirements, DOE policy documents, etc.
3. A separate, detailed cost estimate for the existing requirements and the proposed CRP. The estimate for the proposed CRP shall take into account the costs of implementing the CRP, including the costs the DOE or the WTS may incur in implementing the proposed CRP.
4. A statement of the time by which acceptance of the proposed CRP must be issued in order to achieve the maximum cost reduction.
5. The suggested sharing period for the proposed CRP.

C. Calculation of Estimated Net Savings.

Estimated net savings shall be calculated by subtracting the total cost of the proposed CRP (to the Subcontractor, the WTS, and the DOE) from the total cost of the existing requirements.

D. Acceptance for Negotiation or Rejection of CRP's.

The DOE will notify the Subcontractor through the WTS by letter from the DOE Contracting Officer that the CRP will be accepted for negotiation with the Subcontractor or rejected. The only CRP that will be accepted for negotiation are those which (a) demonstrate a result in a reduction in the total agreed upon estimated cost for the annual period (October 1 through September 30), and (B) will not reappear as costs in subsequent annual periods. The items to be negotiated shall, at a minimum, include the estimated net savings of the change in requirements proposed by the CRP, the estimated reduction in the agreed upon estimated cost for the annual period, and the Subcontractor's share of such net savings. If the CRP is rejected, the letter will set forth the reasons for rejection. If the parties are unable to negotiate acceptable terms, the CRP will be deemed to have been rejected. Until an agreement is negotiated, the Seller shall perform in accordance with existing requirements. Negotiated agreements will be reflected in a CRP Implementation Agreement signed by both the Subcontractor and the WTS.

E. Audit of Actual Savings.

The DOE or the WTS shall have the right to audit the actual costs of an accepted CRP to determine the extent of actual savings. If the actual savings are significantly more or less than the estimated savings of the CRP or the reduction of the estimated cost for the annual period, the amount awarded under the CRP shall be adjusted.

F. Relationship to Other Incentives.

Only those benefits of an accepted CRP, not rewarded under goal achievement objectives, shall be rewarded under this clause.

G. Subcontracts.

The Subcontractor may include an appropriate clause similar to this clause in any lower-tier subcontract. In calculating any estimated net savings in a CRP under the subcontract, the Subcontractor's preparation, submission, testing, development, and implementation costs shall

include any of the Subcontractor's allowable costs, and any CRP incentive payments to a lower-tier subcontractor clearly resulting from the acceptance of such CRP. The Subcontractor may choose any arrangement for the Subcontractor's CRP incentive payments, provided that the payments shall not reduce the DOE's share of subcontract net savings.

H. Disputes.

Actions taken under this clause shall not be subject to the "Disputes" clause or otherwise subject to litigation under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

F.14 DEFENSE NUCLEAR FACILITIES BOARD

The Contractor shall conduct activities in accordance with those DOE commitments to the Defense Nuclear Facilities Safety Board (DNFSB) which are contained in implementation plans and other DOE correspondence to the DNFSB. The Contractor shall support preparation of DOE responses to DNFSB issues and recommendations which affect or can affect Contract work. Based on the Contracting Officer's direction, the Contractor shall fully cooperate with the DNFSB and provide access to such work areas, personnel, and information as necessary. The Contractor shall maintain a document process consistent with the DOE manual on interface with the DNFSB. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

F.15 DUTY FREE ENTRY

FAR 52.225-10

F.16 ENVIRONMENT, SAFETY, AND HEALTH – GOVERNMENT OWNED OR LEASED

In performing work under this Contract, the Subcontractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. This requirement applies to all lower-tier subcontractors.

A. For the purpose of this Article:

1. Safety encompasses Environment, Safety and Health, including pollution prevention and waste minimization; and
2. Employees include Subcontractor and lower-tier subcontractor employees.

B. In performing work under this Subcontract, the Subcontractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Subcontractor shall exercise a degree of care commensurate with the work and the associated hazards. The Subcontractor shall ensure that management of Environment, Safety and Health (ES&H) functions and activities becomes an integral, but visible part of the Subcontractor's work planning and execution processes. The Subcontractor shall, in the performance of work, ensure that:

1. Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Subcontractor and lower-tier subcontractor employees managing or supervising employees performing work.
2. Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.
3. Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

4. Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
 5. Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
 6. Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
 7. The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by WTS and the Subcontractor. These agreed-upon conditions and requirements of the Subcontract are binding upon the Subcontractor. The extent of documentation and level of authority for agreement shall be established in a Safety Management System (System). A Safety Management Plan is required only when so specified in the Statement of Work on the Subcontract.
- C. The Subcontractor shall manage and perform work in accordance with a documented System that fulfills all conditions in paragraph (B) of this Article at a minimum. Documentation of the System shall describe how the Subcontractor will:
1. Define the Work Scope;
 2. Identify and analyze hazards associated with the work;
 3. Develop and implement hazard controls;
 4. Perform work within controls; and
 5. Provide feedback on adequacy of controls and continue to improve safety management.
- When such a System as described in this paragraph is required by the Subcontract, the provisions for Records as found in DEAR 970.5204-79 also applies.
- D. The System shall describe how the Subcontractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to Subcontract requirements and funding limits while maintaining the integrity of the System. The System shall also describe how the Subcontractor will measure system effectiveness.
- E. The Subcontractor shall submit to the Buyer documentation of its System for review and acceptance. Dates for submittal, discussions, and revisions to the system will be established by the Buyer. Guidance on the preparation, content, review, and acceptance of the System will be provided by the Buyer. On an annual basis, the Subcontractor shall review and update, for WTS acceptance, its safety performance objectives, performance measures, and commitments consistent with, and in response to, Subcontract requirements, funding limits and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the Subcontractor's business processes for work planning, budgeting, authorization, execution, and change control.
- F. The Subcontractor shall comply with, and assist WTS in complying with ES&H requirements of all applicable laws and regulations and applicable directives identified in the Article of this

Subcontract on Laws, Regulations, and DOE Directives. The Subcontractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this Subcontract.

- G. The Subcontractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Subcontractor fails to provide resolution or, if at any time, the Subcontractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Buyer may issue an order stopping work in whole or in part. Any stop work order issued by the Buyer under this Article (or issued by the Subcontractor to a lower-tier subcontractor in accordance with paragraph (I) of this Article shall be without prejudice to any other legal or contractual rights of WTS. In the event that the Buyer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Buyer. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this article.
- H. The Subcontractor is responsible for compliance with the ES&H requirements applicable to this subcontract regardless of the performer of the work.
- I. The Subcontractor shall include language substantially the same as this Article in lower-tier subcontracts involving complex or hazardous work on the WIPP or other DOE-owned or leased facilities. Such lower-tier subcontracts shall provide for the right to stop work under the conditions described in paragraph (G) of this Article. Depending on the complexity and hazards associated with the work, the Subcontractor may require that the lower-tier subcontractors submit a Safety Management System for the Subcontractor's review and acceptance.

F.17 FACILITY CLEARANCE

DEAR 952.204-73

F.18 FACILITIES MANAGEMENT

DEAR 970.5237-2

F.19 FOREIGN OWNERSHIP, CONTROL OR INFLUENCE
OVER CONTRACTOR

DEAR 952.204-74

F.20 IDENTIFICATION OF PROPOSED GOVERNMENT FURNISHED EQUIPMENT

The proposal shall contain a list identifying any equipment the Subcontractor proposes to purchase for use in performance of a resulting subcontract for which the Subcontractor will be financially reimbursed under the total cost or price of the subcontract. Such procurements will become Government Furnished Equipment (GFE) and shall be clearly itemized; GFE tagged, inventoried, stored, maintained, and disposed of in accordance with the proposed subcontract's general provisions article titled "Government Property." This clause does not apply to operating supplies or materials to be consumed in the performance of the service or incorporated into specific deliverable item required by the statement of work.

F.21 LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS

- A. The Subcontractor is not liable to the Government for increased cost or interest resulting from failure to comply with the clause of the Subcontract entitled "Cost Accounting Standards and Administration of Cost Accounting Standards" if its failure to comply with the clause is caused by the Subcontractor's compliance with DOE accounting practices and procedures.
- B. The Subcontractor is not liable to the Government for increased costs or interest resulting from the Subcontractor's failure to comply with the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Administration of Cost Accounting Standards, if (1) the Subcontractor includes in each covered lower-tier subcontract a clause making the subcontract

to the Government for increased cost or interest resulting from the Subcontractor's failure to comply with the clauses, and (2) the Subcontractor seeks the Subcontract price adjustment and cooperates with the Government in the Government's attempt to recover from the Subcontractor.

F.22 NUCLEAR HAZARDS INDEMNITY AGREEMENT

The obligation of the WTS to indemnify the Subcontractor or lower-tier subcontractor is subject only to that indemnification provided to WTS under DEAR 952.250-70.

F.23 OPERATIONS AND STORAGE AREAS FAR 52.236-10

F.24 OTHER CONTRACTS FAR 52.236-8

F.25 PATENT RIGHTS – ACQUISITION BY THE GOVERNMENT DEAR 952.227-11
For other than Small Business and Non-profit Organizations DEAR 952.227-13

F.26 PENSION ADJUSTMENTS AND ASSET REVERSIONS FAR 52.215-15

F.27 PERFORMANCE OF WORK BY THE CONTRACTOR FAR 52.236-1

F.28 PERFORMANCE OF WORK AT DOE FACILITIES AND SITES AND FACILITIES OTHER THAN WIPP

When performing work under this subcontract at DOE facilities and sites other than the Waste Isolation Pilot Plant (WIPP), the subcontract shall comply with and follow the list of Applicable Directives set forth in DEAR 970.5204-2 of the General Provisions herein and any additional directives which have been established for the subcontractor at the DOE facility/site and that are applicable to the work being performed and to associated hazards at the particular facility or site.

F.29 PERMITS AND RESPONSIBILITIES FAR 52.236-7

F.30 PREFERENCE FOR U.S.-FLAG AIR CARRIERS FAR 52.247-63

F.31 PRICE-ANDERSON AMENDMENTS ACT

A. The Department of Energy has promulgated Procedural Rules For DOE Nuclear Activities (10 CFR 820), Nuclear Safety Management (Quality Assurance Rules) (10 CFR 830), and DOE Contractor Employee Protection Rules (10 CFR 708), and Occupational Radiation Protection Rules (10 CFR 835) in implementation of the Price-Anderson Amendments Act (PAAA) of 1988, Public Law 100-408, August 20, 1988, as amended. These rules govern the conduct of persons involved in DOE nuclear activities, and, in particular, are designed to achieve compliance with DOE nuclear safety requirements. Violation of the applicable rules will provide a basis for the assessment of civil and criminal penalties under the PAAA.

B. This Order is subject to the requirements of the above rules if the performance of work involves products, activities or operations in areas covered by the Price Anderson Nuclear Hazards Indemnity Clauses of this Order.

C. Indemnification of WTS

To the extent permitted by law, the Subcontractor assumes full responsibility and shall indemnify, save harmless, and defend WTS and its principal subcontractors, their agents, officers, employees, and directors from any civil or criminal liability under Sections 234(a) or 223 (c) of the Act or the implementing regulations at 10 CFR Sections 820, et seq., arising out of the activities of the Subcontractor, its lower-tier subcontractors, suppliers, agents,

employees, officers, or directors. The Subcontractor's obligation to indemnify and hold harmless shall expressly include attorneys fees and other reasonable costs of defending any action or proceeding instituted under Sections 234(a) or 223 (c) of the Act or the implementing regulations at 10 CFR Sections 820, et seq.

A copy of the implementing regulations at 10 CFR Sections 820, et seq., will be made available to the Subcontractor upon request.

F.32	PHYSICAL DATA	FAR 52.236-4
F.33	PRE-CONSTRUCTION CONFERENCE	FAR 52.236-6
F.34	PRIVACY ACT	FAR 52.224-2
F.35	PRIVACY ACT NOTIFICATION	FAR 52.224-1
F.36	REDUCTION OR SUSPENSION OF ADVANCE PARTIAL PROGRESS PAYMENTS	DEAR 970.5232-1
F.37	REFUND OF ROYALTIES	

- A. The contract price includes certain amounts for royalties, payable by the WTS or Subcontractors or both, reported to the Contracting Officer in accordance with the Royalty Information provision of the solicitation.
- B. During performance of the subcontract, if any additional royalty payments are proposed to be charged to the Government as costs under the subcontract that were not included in the original subcontract price, the Subcontractor agrees to submit for approval of the Contracting Officer prior to the execution of any licensing agreement the following information relating to each separate item of royalty or license fee:
 1. Name and address of licensor;
 2. Date of license agreement;
 3. Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
 4. Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
 5. Percentage or dollar rate of royalty per unit;
 6. Unit price of contract item;
 7. Number of units; and
 8. Total dollar amount of royalties.
 9. In addition, if specifically requested by the Contracting Officer, the Subcontractor shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents, copyrights, or other data.
- C. The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any

subcontract hereunder. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this subcontract or subcontracts, or the copying of such data or data that is copyrighted.

- D. The Subcontractor must furnish to the Contracting Officer, before final payment under this Subcontract, a statement of royalties paid or required to be paid in connection with performing this Subcontract and lower-tier subcontracts hereunder.
- E. The Subcontractor is compensated for any royalties reported under paragraph (C) of this clause, only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract.
- F. The Contracting Officer shall reduce the subcontract price to the extent any royalties that are included in the subcontract price are not, in fact, paid by the Subcontractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract. The Subcontractor agrees to repay or credit the Government accordingly, as the Contracting Officer directs. Regardless of prior DOE approval of any individual payments or royalties, DOE may contest at any time the enforceability, validity, scope of, or title to, a patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.
- G. If at any time within 3 years after final payment under this contract, the Subcontractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (D) of this clause, the Subcontractor must promptly notify the Contracting Office of that fact and must promptly reimburse the Government in a corresponding amount.
- H. The Subcontractor agrees to include, and require inclusion of, this clause, including this paragraph (H), suitably modified to identify the parties in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

F.34 RIGHTS TO PROPOSAL DATA

Except for the technical data contained on those pages of the Subcontractor's proposal which are specifically identified in the Order with specific reference to this article and asserted by the Subcontractor as being proprietary data, it is agreed that, as a condition of the award of the Order and notwithstanding the provisions of any notice appearing on the proposal or elsewhere, the Government shall have the right to use, duplicate, disclose, and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which the Order is based.

F.38 RIGHTS IN DATA-GENERAL AND INCLUDING FAR 52.227-14
ALTERNATE V, Modified to include "Definitions" at DEAR 927.409(a)

F.39 RIGHTS IN DATA-GENERAL AND INCLUDING FAR 52.227-14
ALTERNATE II, Modified to include "Definitions" at DEAR 927.409(a)

F.40 RIGHTS IN DATA-GENERAL AND INCLUDING FAR 52.227-14
ALTERNATE III, Modified to include "Definitions" at DEAR 927.409(a)

F.41 SITE INVESTIGATION AND CONDITIONS AFFECTING FAR 52.236-3

F.42 SITE ACCESS AND SECURITY REQUIREMENTS

A. Foreign Nationals:

Access or entry by a foreign national (not a citizen of the United States) to the WIPP Site, DOE Sken-Whitlock Building (SWB) or any other Government leased building is not allowed without first being approved by CBFO Security and the CBFO Manager. All unclassified visits (30 days or less) and assignments (more than 30 days) of foreign nationals will be managed consistent with the Department of Energy Notice and Policy 142.1.

A minimum of 45 days advance notice is required for indices checks of all foreign nationals that are citizens of a sensitive country, require access to a security area, or access to a sensitive subject. A Security Plan is required for unclassified foreign visits and assignments. Contact WIPP Security for required forms and guidelines. At a minimum, the following information must be provided:

- Biographical and personal information, including date and place of birth, place/nature of employment.
- Passport, visa and/or PRA Card (Immigration and Naturalization Service information, as required).
- Purpose of visit; actual dates, subjects and areas to be visited.
- Identification of host group and escort responsibilities. (The host will be required to prepare and process all forms and provide the Security Plan and the Host Report).
- For delivery activities, the WIPP Site main Warehouse will act as the host group and Warehouse personnel will escort the foreign national(s). The Buyer will notify the supplier once the indices check and approvals have been completed.

B. Operating Condition of Delivery Vehicles and Equipment:

Delivery vehicles and equipment entering the WIPP Site, or the SWB or any other Government leased facility, must be in a safe operating condition. Vehicles and equipment must have no leaks, dripping fluids, or any other defects that pose a hazard to personnel and/or the environment. Defective vehicles will not be allowed to enter the WIPP Site or the SWB receiving areas and must be repaired before access is granted.

C. Property Searches:

WIPP Security Officers will inspect all vehicles entering and leaving the WIPP Site. Upon entering the WIPP Site, searches are conducted to prevent bringing the following items onto the site:

- Weapons
- Ammunition
- Explosives
- Illegal drugs
- Alcohol

- Other dangerous instruments or material that could harm or damage people, property or the environment
- Animal companions

Upon leaving the WIPP Site and the SWB, searches may be conducted to prevent the unauthorized removal of government property.

D. Security Badges and GFE/GFP Property:

Subcontractors are responsible for all WIPP issued security badges and entry key cards for all of their employees who have access to the WIPP Site, SWB or other Government leased facilities. The Subcontractor will provide to WTS, a listing of all employees who will need access to the WIPP Site or other satellite facilities. This listing will be provided to and approved by the WTS Procurement Buyer who will present the listing to WIPP Security prior to Subcontractor employees gaining access to the WIPP site. The listing will contain the Subcontractor's company name, name of the employee(s) and the WTS Subcontract Technical Representative name. WIPP Security reserves the right to collect picture badges on a daily basis from those Subcontractors that demonstrate inability to adequately control their security badge(s).

Prior to final payment, any and all security badges, Government Furnished Equipment or Government Furnished Property must be returned and accounted for. WTS reserves the right to withhold final payment pending adequate disposition of security badges and property.

The Subcontractor will immediately report, within 24 hours, to WIPP Security any lost or misplaced security badge or key card. The security badges and the key cards are the property of the U.S. Department of Energy. Subcontractor personnel will maintain and display their badges in accordance with WIPP policies and procedures.

E. WIPP Site Access Requirements:

30 days or less for Subcontractor Employees: Subcontractor personnel who are required to work on WIPP Property for 30 days or less unescorted will be required to complete GET-300. GET-300 consists of completing a video presentation followed by an examination administered by the Security Department. Upon successful completion of the examination, the Subcontractor employee will be issued a contractor badge and will be allowed to access the WIPP site unescorted during normal work hours for a period of 30 days. To obtain the badge each day, the Subcontractor employee will show Security picture identification and then pick up their badge at the main Guard & Security Building. The Subcontractor employee will be required to turn in his/her badge at the gatehouse each day upon leaving the site. Completion of this training does not allow the Subcontractor personnel access to the SWB unescorted.

30 days or more: Subcontractor personnel who are required to work on WIPP Property for 30 days or more must complete the GET Initial Training within 30 days of being assigned to the WIPP. GET training consists of a two day instruction program, with an examination being given at the end of the session. Upon successful completion of the examination, the Subcontractor employee will be issued a contractor picture badge good for a period of one year. Upon completion of the assignment, the Subcontractor personnel will surrender their badge to security.

F. Skeen-Whitlock Building Access Requirements:

30 days or less for Subcontractor Employees: Subcontractor personnel who are required to work at the SWB for 30 days or less unescorted will be required to complete GET-301. GET-301 consists of reading the safety brochure and watching the SWB safety orientation video

followed by an examination administered by the SWB Receptionist. Upon successful completion of the examination, the Subcontractor employee will be issued a "T" badge and will be allowed to access the SWB unescorted during normal work hours for a period of 30 days. Upon completion of the assignment, the Subcontractor employee will surrender their badge to security. Completion of this training does not allow Subcontractor personnel access to the WIPP site unescorted.

30 days or more: Same requirements as noted above for WIPP Site Access.

F.43 SPECIAL TEST EQUIPMENT FAR 52.245-18

F.44 SPECIAL TOOLING FAR 52.245-17

F.45 TOXIC CHEMICAL RELEASE REPORTING FAR 52.223-14

F.46 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION

Documents originated by the Subcontractor or furnished by the Government to the Subcontractor in connection with the Subcontract may contain unclassified controlled nuclear information as determined pursuant to Section 148 of the Atomic Energy Act of 1954, as amended. The Subcontractor shall be responsible for protecting such information from unauthorized dissemination in accordance with DOE regulations and directives.

F.47 WALSH-HEALEY PUBLIC CONTRACTS ACT FAR 52.222-20
(Applies to Material/Equipment/Supplies, exceeding \$100,000)